

REMARKS

A. INTRODUCTION

Claims 1-19, 27-46 and 48-51 are pending and rejected.

Upon entry of this Amendment:

- Claims 1-19, 31-33, and 35-43 will be pending
- Claims 1, 3, 5, 11, 17-19, 31, and 38 will be amended
- Claims 27-30, 34, 44-46, and 48-51 will be cancelled without prejudice
- Claims 1, 3, 5, 11, 17-19, 31, and 38 will be the only independent claims

B. DOUBLE PATENTING REJECTION

Claims 1-19, 27-46, and 48-51 stand “rejected under the judicially created doctrine of obviousness-type double patenting” as being unpatentable over specified claims of U.S. Patent Nos. 6119099, 6598024, 7072850, 6876978, and 6298329.

While we do not necessarily agree with this rejection, a terminal disclaimer is filed concurrently herewith solely to expedite the prosecution of the present application. Accordingly, the double patenting rejection of Claims 1-19, 27-46, and 48-51 is moot.

Claims 44 and 45 have been cancelled, obviating the Examiner’s potential objection as substantial duplicates.

The Office Action states on page 6 that Claims 1-51 are directed to the “same invention” as that of claims 1-25 of co-owned Walker (U.S. Patent No. 6,397,193). We are grateful to the Examiner for bringing Walker to our attention with respect to the pending application. However, we respectfully submit that the claims of the application and the patent are not directed to the “same invention.” Generally, comparison of the respective specifications reveals that Walker is directed to vending, and distinguishes vending from other types of sales (e.g., what it calls “traditional merchandising”). Claims 7-25 each refer specifically to vending machines/apparatus and/or dispensing products at vending machines. Independent Claims 1-6 of Walker also both require generating a credit amount representing an amount of “deposited” currency. None of Claims 1-19, 27-46, and 48-51 is limited to a vending machine or to use of deposited currency. The present application, on the other hand, describes point-of-sale terminals as encompassing cash registers and other types of devices, and contemplates applicability to retail stores, fast food or quick serve restaurants, terminals utilizing bar code scanners, Web-based or remote commerce, and restaurant drive-thru windows.

Regardless, Applicants have cancelled Claims 27-30, 34, 44-46, and 48-51, and have amended all of independent Claims 1, 3, 5, 11, 17-19, 31, and 38 to provide generally (1) that particular functionality recited in respective claims is performed at or by a point-of-sale terminal that comprises a cash register, or by a processor embodied in a cash register (Claims 1, 5, 17-19, and 31 also recite that the point-of-sale terminal does not comprise a vending machine) and (2) that determining or generating a rounded price is irrespective of any amount tendered for a purchase. None of pending Claims 1-19, 31-33, and 35-43 is for the “same invention” as any of Claims 1-25 of Walker.

With respect to the Examiner's request that Applicants state which entity is the prior inventor of the "conflicting subject matter," Applicants submit, for the reasons stated above, that there is no conflict between the claimed subject matter, as is apparent if the whole of each disclosure, and the respective limitations of each claim, are taken properly into account. That said, the inquiry is rendered more difficult by the fact that several of the named inventors (Alderucci, Van Luchene, and Lech) are no longer employed by Walker Digital, LLC, or its affiliates. Applicants submit as yet they have been unable to identify evidence that they have invented any of the specific subject matter of any of Claims 1-25 of Walker, and accordingly it appears that the named inventors for Walker are the inventors of those vending-related embodiments as least as of the filing date of Walker (filed January 22, 1998). Applicants submit that they have priority and originality for the embodiments claimed in the present Application at least insofar as such embodiments are broader than Claims 1-25 of Walker, the embodiments are not limited to vending and are not limited to determination of upsells or rounding of prices based on either a credit amount or an amount of change due, and at least as of the filing date of the parent application 09/045347 (filed March 30, 1998).

C. SECTION 102(E) REJECTION

Claims 1-19, 27-46, and 48-51 stand rejected under 35 U.S.C. 102(e) as being anticipated by Walker (U.S. Patent No. 6,397,193). We respectfully traverse the Examiner's Section 102(e) rejection.

However, Claims 27-30, 34, 44-46, and 48-51 have been cancelled by this Amendment without prejudice. Also, solely for business reasons in order to pursue a desirable embodiment and to expedite allowance of the present rejection, Applicants have amended all of independent Claims 1, 3, 5, 11, 17-19, 31, and 38 to provide generally (1) that particular functionality recited in respective claims is performed at or by a point-of-sale terminal that comprises a cash register, or by a processor embodied in a cash register (Claims 1, 5, 17-19, and 31 also recite that the point-of-sale terminal does not comprise a vending machine) and (2) that determining or generating a rounded price is irrespective of any amount tendered for a purchase. Applicants intend to pursue the original and/or previously presented subject matter of the amended and cancelled claims in one or more continuing applications.

Applicants respectfully submit that Walker does not teach any of the particular combinations of any of amended independent Claims 1, 3, 5, 11, 17-19, 31, and 38. In particular, Walker does not teach use of a cash register. Further, the "automatic dynamic package distribution process" described in FIG. 12 and discussed at the bottom of Column 10 and the top of Column 11 of Walker appears to suggest that a rounded price is only one that does not require a customer to deposit more money or to receive change, and is therefore based on payment previously received from the customer. In contrast, Claims 1, 3, 5, 11, 17-19, 31, and 38 recite a feature generally provide for determining a rounded price irrespective of any amount tendered.

For at least these reasons, Applicants respectfully submit that independent Claims 1, 3, 5, 11, 17-19, 31, and 38 (and dependent Claims 2, 4, 6-10, 12-16, 32, 33, 35-37, and 39-43) contain allowable subject matter.

D. PETITION FOR EXTENSION OF TIME TO RESPOND & AUTHORIZATION TO CHARGE APPROPRIATE FEES

We understand that a three-month extension of time to respond to the Office Action is necessary. Please grant a petition for any extension of time required to make this Response timely.

Charge: \$1,020.00

Deposit Account: 50-0271

Order No.: 01-023

Please charge any appropriate fees set forth in 37 C.F.R. §§ 1.16 – 1.18 for this paper and for any accompanying papers to Deposit Account 50-0271. Please credit any overpayment to the same account.

E. CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's reconsideration is respectfully requested.

If the Examiner has any questions regarding this paper or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

Respectfully submitted,

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Date

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